

KC FILED  
FEB 20 2008  
MICHAEL W. DOBBINS  
CLERK, U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

YAODI HU,

Plaintiff,

vs.

VILLAGE OF MAYWOOD,  
ROBINSON TOWING, INC.,

Defendants.

)  
)  
)  
)  
) No. 07 CV 7203  
) Judge Dow  
) Magistrate Judge Keys  
)  
)  
)

**DEFENDANT ROBINSON TOWING, INC.**  
**MOTION TO DISMISS PURSUANT TO RULE 12(b)(6)**

NOW COMES the Defendant, ROBINSON TOWING, INC., by and through its Attorney, JEFFREY E. MAREK, and for its Motion To Dismiss Pursuant To Rule 12(b)(6) the Plaintiff's Complaint, respectfully states unto the Court as follows:

1. That the Defendant, ROBINSON TOWING, Inc., an Illinois Corporation, for time to time performs towing services for the Village Of Maywood on an as needed basis, which services are requested via telephone call to the Defendant, ROBINSON TOWING, INC., at the time they are needed.

2. That the Defendant, ROBINSON TOWING, INC., is an independent Illinois Domestic Corporation and is not affiliated in any manner with the Village Of Maywood, but for the towing services it provides as requested by the Village

Of Maywood.

3. That on November 9, 2007 the Defendant, ROBINSON TOWING, INC., received instructions from the Village Of Maywood to remove two (2) vehicles, the first from 1110 South 4<sup>th</sup> Avenue, Maywood, Illinois, a certain 1985 White Ford, VIN 1PDJE37L2FHA52663, and the second from 1116 South 4<sup>th</sup> Avenue, Maywood, Illinois, a certain 1995 White Ford, VIN 1FDNF80C3SVAC5241.

4. That the Pre-Tow Vehicle Notice for the White 1985 Ford that was served upon the Plaintiff by the Village Of Maywood is attached hereto and incorporated herein as **Exhibit 1**.

5. That the Authorization For Towing for the White 1985 Ford that was issued to the Defendant, ROBINSON TOWING, INC., by the Village Of Maywood is attached hereto and incorporated herein as **Exhibit 2**.

6. That the Pre-Tow Vehicle Notice for the White 1995 Ford that was served upon the Plaintiff by the Village Of Maywood is attached hereto and incorporated herein as **Exhibit 3**.

7. That the Authorization For Towing for the White 1995 Ford that was issued to the Defendant, ROBINSON TOWING, INC., by the Village Of Maywood is attached hereto and incorporated herein as **Exhibit 4**.

8. That both the 1985 and 1995 White Ford Trucks were towed, as requested by the Village Of Maywood, by the Defendant, ROBINSON TOWING,

INC., on November 20, 2007.

9. That Paragraph 1 of the Plaintiff's Complaint joins ROBINSON TOWING, INC. as a 1983 defendant in the Plaintiff's Complaint.

10. That Paragraph 2 of the Plaintiff's Complaint alleges that the Defendant, ROBINSON TOWING, INC., acted under color of state law, however, no further allegations are plead in the Plaintiff's Complaint to competently establish the Defendant, ROBINSON TOWING, INC., as a state actor subject to the provisions and requirements of section 1983 of the United States Code.

#### ARGUMENT

11. In Lugar v. Edmondson Oil Co., Inc., 457 U.S. 922, 102 S.Ct. 2744 (1982) the United States Supreme Court addressed the issue of the state action requirement and detailed the two-part test in determining whether action is attributable to the state, the second part of which test requires that the party charged with the deprivation must be a person who may fairly be said to be a state actor. This may be because he is a state official, because he has acted together with or has obtained significant aid from state officials, or because his conduct is otherwise chargeable to the state. Id at 937, 102 S.Ct. At 2753-54.

12. The United States Supreme Court recognized that federal pleading allows great liberality, Conley v. Gibson, 355 U.S. 41.

13. Private parties are not generally acting under color of state law and we have stated that “conclusionary allegations, unsupported by facts, will be rejected as insufficient to state a claim under the Civil Rights Act.” Jones v. Community Redevelopment Agency, 773 F.2d 646 (9<sup>th</sup> Cir.1984).

14. The United States Supreme Court further defined the requirements necessary to become a state actor in Dennis v. Sparks, 449 U.S. 24, 101 S. Ct. 183 (1980), “ A person may become a state actor by conspiring with a state official or by engaging in joint activity with state officials”.

15. The Defendant, ROBINSON TOWING, INC., on November 21, 2007 when it towed the 1985 and 1995 White Ford Trucks, provided towing services only for the Village Of Maywood, at the specific request and demand of the Village Of Maywood and no facts are alleges in the Plaintiff's Complaint to support the allegation that the Defendant, ROBINSON TOWING, INC., is a state actor and subject to 1983 liability.

16. The Defendant, ROBINSON TOWING INC., argues that the mere act of towing a vehicle, which vehicle is in violation of local ordinance, does not make a party a co-conspirator or a joint actor.

17. That the Plaintiff's 1983 Complaint fails to state a claim upon which relief may be granted against the Defendant, ROBINSON TOWING, INC., as a 1983 Defendant and therefore the Plaintiff's Complaint should be dismissed.

**WHEREFORE**, the Defendant, ROBINSON TOWING, prays for an Order dismissing the Plaintiff's Complaint against the Defendant, ROBINSON TOWING, INC., for failing to state a claim upon which relief can be granted and that it be allowed its costs for defending against same which has been so frivolously brought.

Respectfully submitted,

  
**JEFFREY E. MAREK**

**JEFFREY E. MAREK**  
Attorney for Robinson Towing  
Suite 105  
1035 South York Road  
Elmhurst, Illinois 60126  
630-832-8546  
ARDC # 6187370

**EXHIBIT 1**

Village of



# MAYWOOD

40 MADISON STREET • MAYWOOD ILLINOIS 60153 • (708) 450-4405

CODE ENFORCEMENT DEPT.

## CERTIFIED MAIL

November 9, 2007

Yaodi Hu (07-0084)  
1115 S. 5<sup>th</sup> Ave.  
Maywood, IL 60153

### Pre-Tow Vehicle Notice

YOU ARE LISTED AS THE REGISTERED OWNER OR PERSON ENTITLED TO POSSESSION OF THE FOLLOWING DESCRIBED VEHICLE:

1985, Ford, Carry-all, White, 3 door,  
IL PLATE - "99508F" IL. V.I.N. "1PDJE3712FHA52663"

WHICH IS LOCATED AT: 1116 S. 4<sup>th</sup> Ave (Rear Vacated public L.O.W.) MAYWOOD, IL.

THIS VEHICLE APPEARS TO BE ABANDONED OR INOPERATIVE FOR THE FOLLOWING REASON:

**ABANDONED AT THE ABOVE-MENTIONED LOCATION FOR A PERIOD EXCEEDING 7 (SEVEN) DAYS AND PROPERTY OWNER AUTHORIZATION.**

THE VILLAGE OF MAYWOOD WILL TOW THE VEHICLE OR CAUSE IT TO BE TOWED AFTER 7 DAYS FROM THE ABOVE DATE OF MAILING OR PERSONAL DELIVERY UNLESS YOU MOVE THE VEHICLE TO A LAWFUL LOCATION OR REQUEST A HEARING AS SET FORTH BELOW. ANY SUCH HEARING WILL ONLY CONCERN THE PROPOSED TOWING AND WILL NOT BE DETERMINATIVE OF OR ADJUDICATE ANY PARKING TICKET OR OTHER CITATION CONCERNING THE VEHICLE. IF THE VEHICLE IS TOWED, YOU WILL BE REQUIRED TO PAY ALL TOWING AND STORAGE CHARGES BEFORE THE VEHICLE IS RELEASED.

THE TOW IS AUTHORIZED BY CHAPTER 99.02 OF THE M.C.O. WHICH PROVIDES THAT: ANY ABANDONED AND/OR INOPERATIVE VEHICLE MAY BE TOWED.

IF YOU WISH TO REQUEST A HEARING ON THE LEGALITY OF THE PRESENT LOCATION AND CONDITION OF YOUR VEHICLE, YOU MUST CONTACT THE OFFICE LISTED BELOW AND FILE A WRITTEN REQUEST FOR SUCH HEARING WHICH MUST BE RECEIVED BY THIS OFFICE, WITHIN 7 DAYS FROM THE MAILING OR PERSONAL DELIVERY OF THIS NOTICE:

THE DEPARTMENT OF CODE ENFORCEMENT  
VILLAGE OF MAYWOOD  
40 MADISON STREET  
MAYWOOD, ILLINOIS 60153

LIEN HOLDER: None Listed

OFFICER: 309

**EXHIBIT 2**



CODE ENFORCEMENT DEPT.  
VILLAGE OF MAYWOOD  
40 MADISON STREET  
MAYWOOD, IL 60153

AUTHORIZATION FOR TOWING  
VILLAGE OF MAYWOOD



CODE ENFORCEMENT DEPARTMENT

TO TOW AWAY AND DISPOSE OF ABANDONED, INOPERATIVE, OR DILAPIDATED VEHICLE

ADDRESS TO BE TOWED FROM: 1116 So 5th Ave

KIND OF VEHICLE (Trade Name): Ford

SERIES NAME (Belair, Electra, Etc.): \_\_\_\_\_

BODY STYLE: 2 Door

COLOR OF AUTO: White

YEAR OF MANUFACTURE: 1985

LICENSE PLATE (State, Year, & Number): 99-508 F

VEHICLE ID. NUMBER: 1P0JE37L2FA52663

REASON FOR TOWING: \_\_\_\_\_

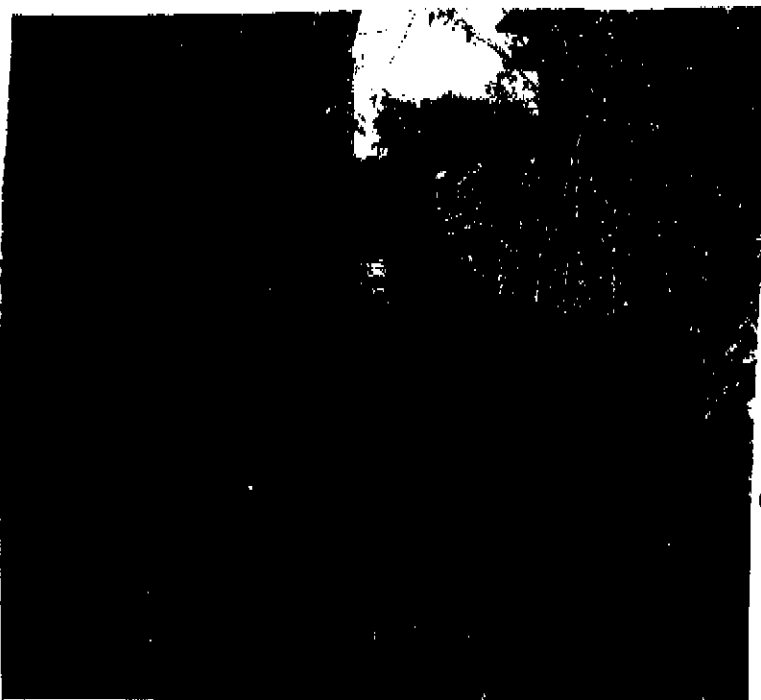
CONDITION OF VEHICLE WHEN TOWED: \_\_\_\_\_

Vehicle Tow ID. # 07-0084

11/9/07

DATE STICKERED

Other Comments-Pictures Attached



Signature of Auto Owner, OR  
Property Owner Authorizing tow.

X [Signature]  
Signature: 1116 So 5th Ave  
342-3432  
(phone required)

11/19/07  
DATE OF TOW AUTHORIZATION

Robinson's Towing  
AUTHORIZED TOWING SERVICE NAME

[Signature] #809  
Inspector of Premises

[Signature]  
Code Enforcement Director

Loan Holder:

Owner's ID: 1116 So 5th Ave  
Maywood IL 60153

**EXHIBIT 3**

Village of



MAYWOOD

40 MADISON STREET • MAYWOOD, ILLINOIS 60153 • (708) 450-4405

CODE ENFORCEMENT DEPT.

**CERTIFIED MAIL**

November 9, 2007

Yaodi Hu (07-0083)  
1115 S. 5<sup>th</sup> Ave.  
Maywood, IL 60153

**Pre-Tow Vehicle Notice**

YOU ARE LISTED AS THE REGISTERED OWNER OR PERSON ENTITLED TO POSSESSION OF THE FOLLOWING DESCRIBED VEHICLE:

1995, Ford, Carry-all, White, 3 door,  
IL PLATE-"216966D" IL. V.I.N. "1EDNFB C38VA05241"

WHICH IS LOCATED AT: 1110 S. 4<sup>th</sup> Ave (Rear Vacated public R.O.W.) MAYWOOD, IL

THIS VEHICLE APPEARS TO BE ABANDONED OR INOPERATIVE FOR THE FOLLOWING REASON:

**ABANDONED AT THE ABOVE-MENTIONED LOCATION FOR A PERIOD EXCEEDING 7 (SEVEN) DAYS AND PROPERTY OWNER AUTHORIZATION.**

THE VILLAGE OF MAYWOOD WILL TOW THE VEHICLE OR CAUSE IT TO BE TOWED AFTER 7 DAYS FROM THE ABOVE DATE OF MAILING OR PERSONAL DELIVERY UNLESS YOU MOVE THE VEHICLE TO A LAWFUL LOCATION OR REQUEST A HEARING AS SET FORTH BELOW. ANY SUCH HEARING WILL ONLY CONCERN THE PROPOSED TOWING AND WILL NOT BE DETERMINATIVE OF OR ADJUDICATE ANY PARKING TICKET OR OTHER CITATION CONCERNING THE VEHICLE. IF THE VEHICLE IS TOWED, YOU WILL BE REQUIRED TO PAY ALL TOWING AND STORAGE CHARGES BEFORE THE VEHICLE IS RELEASED.

THE TOW IS AUTHORIZED BY CHAPTER 99.02 OF THE M.C.O. WHICH PROVIDES THAT: ANY ABANDONED AND/OR INOPERATIVE VEHICLE MAY BE TOWED.

IF YOU WISH TO REQUEST A HEARING ON THE LEGALITY OF THE PRESENT LOCATION AND CONDITION OF YOUR VEHICLE, YOU MUST CONTACT THE OFFICE LISTED BELOW AND FILE A WRITTEN REQUEST FOR SUCH HEARING WHICH MUST BE RECEIVED BY THIS OFFICE WITHIN 7 DAYS FROM THE MAILING OR PERSONAL DELIVERY OF THIS NOTICE:

**THE DEPARTMENT OF CODE ENFORCEMENT  
VILLAGE OF MAYWOOD  
40 MADISON STREET  
MAYWOOD, ILLINOIS 60153**

LIEN HOLDER: None Listed

OFFICER: 309

**EXHIBIT 4**

CODE ENFORCEMENT DEPT.  
VILLAGE OF MAYWOOD  
40 MADISON STREET  
MAYWOOD, IL. 60153

## AUTHORIZATION FOR TOWING

VILLAGE OF MAYWOOD



## CODE ENFORCEMENT DEPARTMENT

TO TOW AWAY AND DISPOSE OF ABANDONED, INOPERATIVE, OR DILAPIDATED VEHICLE

ADDRESS TO BE TOWED FROM: X 1110 So 4th AveKIND OF VEHICLE (Trade Name): X FORD

SERIES NAME (Bel Aire, Electra, Etc.): \_\_\_\_\_

BODY STYLE: 2 DoorCOLOR OF AUTO: X whiteYEAR OF MANUFACTURE: 1995LICENSE PLATE (State, Year, & Number): 216 966 UVEHICLE ID. NUMBER: 1EDNF80C3SVAC5241

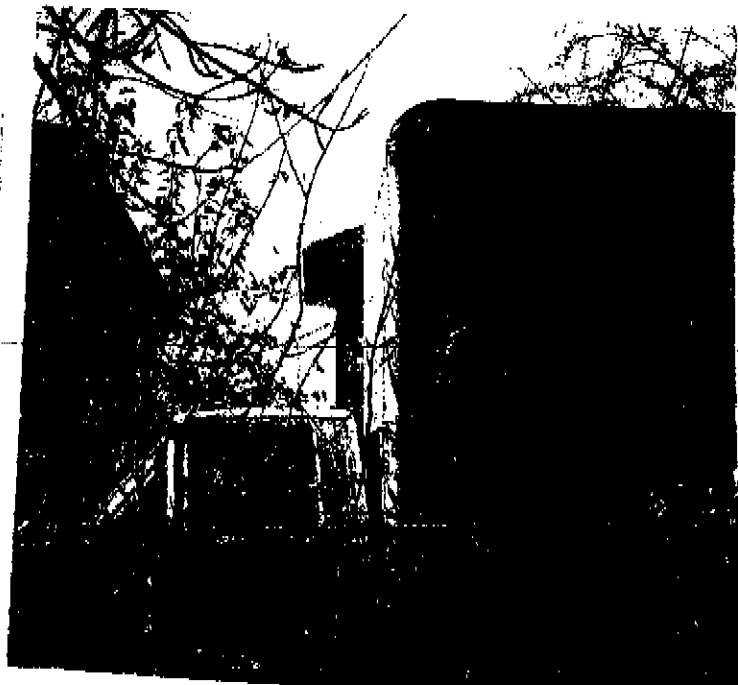
REASON FOR TOWING: \_\_\_\_\_

CONDITION OF VEHICLE WHEN TOWED: \_\_\_\_\_

Vehicle Tow ID. # 07-008311/09/07

DATE STICKERED

Other Comments-Pictures Attached

Signature of Auto Owner, OR  
Property Owner Authorizing tow.

X James Robinson  
Signature: \_\_\_\_\_  
1110 So 4th Ave.  
708-865-8428  
(phone required)

Lien Holder:

Owner's ID: HU YAO Di  
1115 So 5th Ave  
Maywood IL 60153

11/19/07

DATE OF TOW AUTHORIZATION

Robinson Towing  
AUTHORIZED TOWING SERVICE NAME

Josh Simon #309  
Inspector of Premises

RXT  
Code Enforcement Director